IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.10 OF 1996

The Shipping Corporation
of India Ltd., Shipping House,
245, Madame Cama Road,
Bombay - 400 021 ... Appellant

V/s.

Shri Madhavan
s/o. Shri Raman Arakkan
residing at Bhavani House,
III Road, Post: Azhikode,
Cannanore, Kerala ... Respondent

Mr.Tariq Baig a/w Ms.S.Wesa i/b Bhatt & Saldanha for Appellant
Mr.N.M. Ganguli for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 18, 2005**

ORAL JUDGMENT:

. The First Appeal challenges the judgment and order of the Commissioner for Workmen's Compensation who has granted the respondent-workman compensation amounting to Rs.3,40,000/-.

2. The facts in this case are not disputed. The Respondent was employed as the Chief Cook on a vessel owned by the Appellant. On 28.1.1992, the respondent complained of rectal bleeding. He was signed off from the vessel the next day and was admitted to a hospital

in Vishakhapatnam. The Doctor's certificate dated 14.2.1992 issued to him in Vishakhapatnam certifies that the respondent was suffering from Diabetes Mellitus. On 2.3.1992, the respondent was operated for piles and discharged from the hospital soon thereafter. On 7.4.1992, the respondent was examined and his blood report confirmed the existence of Diabetes Mellitus. He was then certified as permanently unfit for employment on the appellant's ship.

3. In 1994, the respondent by an application claimed compensation on account of an injury or accident suffered by him in the course of and arising out of his employment with the appellant. The Respondent claimed that

he developed diabetes on account of his employment with the Appellant. The claim was resisted by the Appellant by filing its written statement. It was contended that diabetes could not be considered an employment injury. Evidence was led before the Commissioner for Workmen's Compensation - both oral and documentary. The Commissioner after assessing the evidence has directed payment of Rs.3,40,000/- to the respondent. This order is challenged by the Petitioner by filing the present appeal.

4. Mr.Baig, appearing on behalf of the Appellant, submits the pleadings in the application are absolutely vague and therefore, no compensation should have been awarded to the respondent. According to him, the respondent was signed off from the vessel because he had to undergo surgery for piles. The learned Advocate submits that neither Diabetes Mellitus nor surgery for piles can be termed as accidents arising out of and in the course of employment nor are they employment injuries. He further submits that the evidence on record does not prove either that Diabetes Mellitus could be considered to be a disease or that it could be related to the nature of work that the respondent was performing. According to him, the only reason why the Commissioner has awarded compensation is that the respondent cooked for about 80 people every day and that the respondent was working continuously on the vessel without any weekly-offs. He submits that there is no medical evidence on record which establishes that the respondent suffered from Diabetes Mellitus on account of the nature of work that he was performing.

5. Mr.Ganguli, appearing on behalf of the Respondent-workman, submits that when the respondent was employed in 1973, he was declared medically fit and, therefore, he was able to join service. He submits that

it was obvious therefore that the respondent was not suffering from any disease at that point of time and had contracted diabetes only during his employment. He relies on the judgment in the case of *Sulochana v/s.A.P. State Road Transport Corporation & Ors.*, **2000 II CLR 932** and *Chandramathi v/s. Employees' State Insurance Corporation*, **2004 I CLR 234** to submit that Diabetes is a disease that can be related to the work performed by the respondent.

6. On a perusal of the pleadings, I am of the view that the respondent failed to establish that he suffered from Diabetes on account of the nature of the work that he was required to perform on the vessel. Undoubtedly, the respondent was the Chief Cook on the vessel. He cooked for a number of people every day without weekly-offs. However, there is no documentary or oral evidence to indicate that this work could lead to Diabetes, a disease which is considered to be a silent killer. The respondent has been unable to establish that there was a causal connection between the disease that he suffered from and the nature of work he performed. Besides stating on oath that his parents did not suffer from Diabetes, there is nothing on record to establish that it was a work related disease. The Doctor who has been examined on behalf of the appellant

is the Assistant Medical Officer of the appellant. He has stated that although he had not personally examined the respondent, Dr.Modi had certified that the respondent was permanently unfit to continue in service on account of Diabetes Mellitus. The Doctor has stated that there are various reasons for the occurrence of Diabetes. However, the Respondent has not bothered to elicit any information from him as to whether he could have suffered from diabetes on account of the nature of his duties. Neither is there any cross-examination on this point, nor has the Respondent examined any other doctor to prove his case.

7. It is apparent that the Respondent was suffering from Diabetes Mellitus. It was not necessarily work related. Diabetes can be caused due to various factors such as genetic factors, hypertension, stress, etc. It was for the respondent to establish before the Court on evidence that the work which he was performing led to the disease and therefore, he suffered from Diabetes Mellitus. The Respondent chose not to examine any Doctor. This being the position, I find it difficult to accept that Diabetes was necessarily caused and aggravated by the nature of work of the respondent on the vessel. Therefore, in my view, it cannot lead to the conclusion that Diabetes Mellitus suffered by the

Respondent was an accident or an injury arising out of and in the course of employment. Assuming that the respondent was not suffering from Diabetes when he was employed in 1973, it could not necessarily lead to the conclusion that the disease he suffered from was work related. Unless the respondent is able to establish a nexus between the injury or the disease caused and the nature of work that he was performing, in my view, he is not entitled to compensation.

8. Reliance placed by the learned Advocate on the case of *Sulochana* (supra) is misplaced. That was a case where the Petitioner was declared unfit for service on account of being a diabetic patient. Her services were therefore, terminated within one year of her employment. A learned Single Judge of the Andhra Pradesh High Court held that the service regulations applicable did not debar a diabetic person from being recruited in service or from continuing in service. It was established that she suffered from gestational diabetes and was not necessarily a diabetic patient suffering from the disease continuously. On this basis, the learned Single Judge held that it was irrational to terminate her services as there were a number of diabetic persons working on more onerous jobs and contributing to the community welfare. This judgment in my view, has no

application to the facts before me. The case before me is a case under Workmen's Compensation Act and the payment of compensation is governed by the provisions of the Workmen's Compensation Act. The claimant must establish that he suffered an injury arising out of and in the course of employment for being entitled to compensation. This is not a case where termination of services of the respondent has been questioned.

9. In the case of *Chandramathi* (supra), the Kerala High Court has observed that two factors must be established in order to uphold a claim under the Workmen's Compensation Act; firstly, that the accident should arise out of and in the course of employment and secondly, there should be some causal connection between the employment and the death. The learned Judge has also observed that Workmen's Compensation Act is a social welfare legislation and the Court must lean towards a person for whose benefit the legislation is enacted. It has also been observed in that case that the heart ailment suffered by the deceased was due to the work done by him which resulted in his death and it was held as a causal relationship with the employment. There cannot be any dispute with the views expressed by the learned Judge. However, in the present case, the respondent has not been able to establish that there was

a causal connection or a nexus between the injury or accident suffered by him and his work.

10. It is also submitted on behalf of the appellant that the disease cannot be considered either as an accident or an injury as it is not a specified injury or an occupational disease under the Act and therefore no compensation could have been awarded. Diabetes may not be stipulated as an occupational disease. However, it could be regarded as an unscheduled injury for which compensation is payable under the Act provided there exists a causal connection between the work and his employment.

11. The award of the Commissioner is set aside. However, in the facts and circumstances of the case, since the respondent has already been paid an amount of Rs.1,00,000/-, the appellant will not insist on it being refunded. Appeal allowed accordingly.